

**United States Department of Labor
Employees' Compensation Appeals Board**

S.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Youngstown, OH, Employer**

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**Docket No. 16-0390
Issued: September 20, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 29, 2015 appellant filed a timely appeal from a November 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her accepted right carpal tunnel syndrome, effective November 24, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence after OWCP rendered its November 24, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 25, 2009 appellant, then a 49-year-old mail handler, injured her neck and left upper extremity in the performance of duty.³ OWCP accepted her traumatic injury claim (Form CA-1) for left shoulder sprain and cervical sprain/strain under OWCP File No. xxxxxx454. Appellant had previously sustained work-related neck and upper extremity injuries on August 28 and September 30, 2008, which OWCP accepted for neck sprain/strain, left shoulder sprain, right carpal tunnel syndrome, and aggravation of preexisting cervical stenosis (OWCP File Nos. xxxxxx661 and xxxxxx009).⁴ Following her latest employment injury, she was able to work in a limited-duty capacity, but, as of September 21, 2010, the employing establishment was no longer able to accommodate appellant's work restrictions. Therefore, OWCP paid appellant wage-loss compensation for temporary total disability.⁵ Appellant returned to full-time, light-duty work on March 28, 2011.

In August 2012, OWCP referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. In her September 20, 2012 report, Dr. Ghanma provided results on examination and reviewed the statement of accepted facts (SOAF), history of the injuries, and the medical evidence of record. He found that appellant's accepted cervical conditions, left shoulder sprain/strain, and right carpal tunnel syndrome had resolved. Dr. Ghanma reported diagnostic findings of cervical degenerative disc disease and left acromioclavicular (AC) joint degenerative disease. However, he opined that neither condition was employment related. Dr. Ghanma also noted that appellant had right shoulder degenerative changes that affected her range of motion. This too was not employment related. Dr. Ghanma opined that based on appellant's accepted conditions having resolved, she was capable of returning to full-duty work and no further treatment for her accepted conditions was necessary.

On November 20, 2012 appellant began to lose intermittent work hours again and stopped work completely on February 8, 2013 due to nonemployment-related illness. She returned to work on April 26, 2013, but stopped again on April 27, 2013 because the employing establishment was unable to accommodate her medical restrictions. OWCP resumed payment of wage-loss compensation effective April 27, 2013.⁶

Subsequently, appellant submitted reports dated January 9, February 6, and March 6, 2014 from Dr. Timothy J. Wagner, a Board-certified family practitioner, who diagnosed carpal tunnel syndrome, impingement syndrome of shoulder region, shoulder pain, neck pain, cervical sprain, and cervical spinal stenosis. Upon physical examination, Dr. Wagner found restriction of range of motion in the neck, back, upper back, and bilateral shoulders. He also found abnormal and decreased muscle strength in the upper extremities bilaterally due to pain. On April 2, 2014

³ Appellant was performing the job of cut-ups and rejects when she experienced pain in her left shoulder.

⁴ OWCP administratively combined the above-noted cervical and upper extremity injury claims and assigned File No. xxxxxx454 as the master file.

⁵ OWCP placed appellant on the periodic compensation rolls, effective February 13, 2011.

⁶ Effective December 15, 2013, OWCP returned appellant to the periodic compensation rolls.

Dr. Wagner found numbness in appellant's right and left hands and tenderness in the left shoulder, neck, left upper arm, right shoulder, and right upper arm. On May 15, 2014 he reported that appellant complained of worsening pain in the right arm and numbness and tingling in both arms.

OWCP found a conflict in medical opinion between Drs. Wagner and Ghanma and referred appellant to Dr. Robert C. Erickson, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the issue of whether she continued to have any disability or residuals as a result of the accepted employment conditions. In his May 29, 2014 report, Dr. Erickson reviewed a statement of accepted facts and the medical evidence of record. He found that appellant's left shoulder sprain and cervical sprain conditions had resolved. Dr. Erickson concluded that appellant had reached maximum medical improvement and was capable of working regular duty with medical restrictions that were unrelated to her accepted conditions.

Appellant submitted reports dated June 11 through September 24, 2014. Dr. Wagner noted that appellant had been experiencing increased pain after physical therapy to the point where she was unable to complete exercises due to pain in the neck and left shoulder. On September 24, 2014 he reiterated his diagnoses and indicated that appellant's diagnoses included: upper arm sprain, cervical spinal stenosis, cervical sprain, bilateral carpal tunnel syndrome, exacerbation of asthma, impingement syndrome of shoulder region, neck pain, bilateral shoulder pain, and sinusitis.

In a July 30, 2015 memorandum to the file, OWCP acknowledged that Dr. Erickson's impartial medical examination was insufficient to resolve the issue in the claim because he was not asked to address all of the accepted conditions in appellant's combined cases. Therefore, his May 29, 2014 report could not be used to terminate her compensation benefits. OWCP further indicated that additional medical development was needed to address appellant's residuals and work capabilities in regards to all of her accepted conditions.

In an August 7, 2015 letter, OWCP requested that Dr. Wagner submit an updated report regarding appellant's work-related conditions and capabilities, including any residuals of her cervical sprain and aggravation of cervical stenosis. Dr. Wagner did not respond.

On August 11, 2015 OWCP referred appellant to Dr. Richard Deerhake, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her accepted employment-related conditions. In his September 9, 2015 report, Dr. Deerhake reviewed the updated SOAF and appellant's medical history.⁷ On physical examination he found that appellant had approximately 80 percent range of motion in her neck. Appellant complained bitterly of pain when Dr. Deerhake touched her or moved her in certain directions in a nonorganic fashion. In ranging the shoulders, she had a lot of weakness, positive Waddell-type signs, and exaggerated pain with any attempts at motion of her shoulders. Dr. Deerhake found

⁷ The updated August 7, 2015 SOAF identified appellant's accepted conditions under OWCP File Nos. xxxxxx661, xxxxxx009 and xxxxxx454. It also noted that appellant had the following nonwork-related medical diagnoses: degenerative joint and disc disease of the cervical spine; and degenerative joint disease of the bilateral AC joints.

that appellant's shoulders could be moved through essentially a normal range of motion when she was distracted. Appellant had weakness in abduction, forward flexion, and internal and external rotation. She had normal reflexes, normal fine touch sensation, negative Tinel's signs, and negative Phalen's tests in both upper extremities. Dr. Deerhake found that appellant did have "a residual loss of motion of the cervical spine, and this could not be attributable to any of the specific injuries, but would relate to basically all three of them." He opined that "she will have some permanence to the loss of motion of the cervical spine related to the degenerative changes and the cervical stenosis." Regarding appellant's left shoulder condition, Dr. Deerhake opined that she had a lot of exaggeration in her findings and that it would be impossible to tell if there were residuals remaining from her left shoulder sprain related to her employment injuries. He found that appellant had no symptoms or residuals related to carpal tunnel syndrome. Dr. Deerhake concluded that appellant was capable of her regular duties as a mail handler and released her to full-duty work without restrictions.

By letter dated October 23, 2015, OWCP notified appellant that it proposed to terminate her wage-loss compensation. It advised appellant that her claim would remain open for conservative medical treatment of the cervical spine and left shoulder. OWCP further advised that the proposed action was based on Dr. Deerhake's September 9, 2015 second opinion examination results. It explained that wage-loss compensation would be terminated with respect to all three claims (August 28 and September 30, 2008, and September 25, 2009), and that medical benefits would be terminated with respect to appellant's accepted right carpal tunnel syndrome (September 30, 2008). OWCP afforded appellant 30 days to submit additional evidence or argument in disagreement with the proposed action.

In response, appellant submitted a November 14, 2015 narrative statement arguing that Dr. Deerhake's second opinion lacked probative value and should not be given the weight of the evidence in her case.

By decision dated November 24, 2015, OWCP terminated appellant's medical benefits for right carpal tunnel syndrome and also her wage-loss compensation benefits effective that day, noting that the claim would remain open for conservative medical treatment of her accepted cervical spine and left shoulder conditions. It found the weight of the medical evidence was represented by Dr. Deerhake.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁸ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer

⁸ See *S.F.*, 59 ECAB 642 (2008).

related to the employment.⁹ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹¹ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹²

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹³ For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."¹⁴ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.¹⁵

ANALYSIS

Appellant's accepted conditions include neck/cervical sprain/strain, left shoulder sprain, right carpal tunnel syndrome, and aggravation of preexisting cervical stenosis (OWCP File Nos. xxxxxx454, xxxxxx661 and xxxxxx009). Effective November 24, 2015, OWCP terminated entitlement to wage-loss compensation under all three claims, and terminated medical benefits with respect to her previously accepted right carpal tunnel syndrome (OWCP File No. xxxxxx009).¹⁶ It based its decision to terminate compensation and medical benefits carpal tunnel syndrome only on the September 9, 2015 report of Dr. Deerhake, a Board-certified orthopedic surgeon and OWCP referral physician.

OWCP referred appellant to Dr. Deerhake for a second opinion evaluation to determine the nature and extent of her accepted employment-related conditions. In his September 9, 2015 report, Dr. Deerhake found that appellant had approximately 80 percent range of motion in her neck. In ranging the shoulders, appellant had a lot of weakness, positive Waddell-type signs, and exaggerated pain with any attempts at motion of her shoulders. Dr. Deerhake found that appellant's shoulders could be moved through essentially a normal range of motion when she

⁹ See *I.J.*, 59 ECAB 524 (2008).

¹⁰ See *J.M.*, 58 ECAB 478 (2007).

¹¹ See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹² See *James F. Weikel*, 54 ECAB 660 (2003).

¹³ 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁴ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹⁵ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁶ Appellant remained eligible for medical benefits with respect to her accepted cervical/neck and left upper extremity employment injuries.

was distracted. Appellant had normal reflexes, normal fine touch sensation, negative Tinel's signs, and negative Phalen's tests in both upper extremities. Dr. Deerhake found that appellant had a residual loss of motion of the cervical spine, which could not be attributable to any of the specific injuries. Regarding appellant's left shoulder condition, he opined that she had a lot of exaggeration in her findings and that it would be impossible to tell if there were residuals remaining from her left shoulder sprain related to her employment injuries. Dr. Deerhake found that appellant had no symptoms or residuals related to carpal tunnel syndrome. He concluded that appellant was capable of her regular duties as a mail handler and released her to full-duty work without restrictions.

The Board finds that Dr. Deerhake's report represented the weight of the medical evidence as of November 24, 2015. OWCP properly relied on his September 9, 2015 report in terminating appellant's wage-loss compensation and medical benefits (CTS only). The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Deerhake's opinion is based on a proper factual and medical history and his report contained a detailed summary of this history. He reviewed the medical records and made his own examination findings to reach a reasoned conclusion regarding appellant's conditions.¹⁷ At the time benefits were terminated, he found no basis on which to attribute any continued disability to appellant's accepted conditions. Dr. Deerhake's opinion as set forth in his September 9, 2015 report is found to be probative evidence and reliable. The Board finds that Dr. Deerhake's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted conditions.

In his reports, Dr. Wagner diagnosed upper arm sprain, bilateral carpal tunnel syndrome, impingement syndrome of shoulder region, cervical sprain, and cervical spinal stenosis. Upon physical examination, he found restriction of range of motion in the neck, back, upper back, and bilateral shoulders. Dr. Wagner also found abnormal and decreased muscle strength in the upper extremities bilaterally due to pain. He asserted that appellant had been noticing increased pain after physical therapy to the point where she was unable to complete exercises due to pain in the neck and left shoulder. However, Dr. Wagner did not provide any medical rationale explaining how appellant's conditions were causally related to her federal employment or her accepted conditions or why they rendered her disabled. Thus, his reports are of diminished probative value and insufficient to overcome the weight of Dr. Deerhake's report or to create a medical conflict.¹⁸

Accordingly, the Board finds that Dr. Deerhake's opinion continues to constitute the weight of the medical evidence and supports OWCP's decision terminating appellant's wage-loss compensation and medical benefits (carpal tunnel only), effective November 24, 2015.

¹⁷ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

¹⁸ See *S.S.*, Docket No. 15-1160 (issued January 11, 2016). The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion. *James Mack*, 43 ECAB 321 (1991).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her accepted right carpal tunnel syndrome, effective November 24, 2015.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board